

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ROBERT STINSON,

Plaintiff,

v.

Case No. 2:09-cv-0133-PP

CITY OF MILWAUKEE, et al.,

Defendants.

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PLAINTIFF'S OBJECTIONS TO LOWELL T. JOHNSON  
DIRECT EXAMINATION DESIGNATIONS

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Pursuant to Federal Rule of Evidence 611, Plaintiff has a global objection to Dr. Johnson's direct examination because it was conducted almost entirely through improper leading questioning. Fed. R. Evid. 611(c)<sup>1</sup> ("Leading Questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony"); *see also Westfall v. Norfolk S. Ry. Co.*, No. 3:13CV926, 2014 WL 4979273, at \*2 (N.D. Ind. Oct. 6, 2014) (striking party's deposition testimony where party's "counsel engaged in the tactic of asking his own client improper leading questions, thereby getting his client to respond in the way he wanted, and then coming back with a proper direct examination question to which he then gets the answer he had first obtained through improper leading questions."); *Bockelman v. BNSF Ry. Co.*, No. 10-1001, 2011 WL 5180382, at \*4 (C.D. Ill. Oct. 28, 2011) ("what counsel was doing was unnecessarily and improperly emphasizing the proper standard that an expert must apply in order to offer an opinion. The objections are SUSTAINED.").

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<sup>1</sup> The changes to Rule 611 were designed to expand the scope of what qualified as an adverse witness. *See Ellis v. City of Chicago*, 667 F.2d 606, 612–13 (7th Cir. 1981) (the changes to the rules were "designed to enlarge the categories of witnesses automatically regarded as adverse, and therefore subject to interrogation by leading questions without further showing of actual hostility). Dr. Johnson made no such showing that his client required leading questioning.

Plaintiff lodged his objection to counsel leading Dr. Johnson early in the deposition. *See* Tr. at 303:23-307:1. Dr. Johnson’s counsel acknowledged that “ordinarily, obviously non-leading questions must be used on direct examination but the rule is phrased in the suggestive. . . .” Tr. 304:22-24. Counsel stated that leading on direct was permissible in situations “when a witness is unable to convey information meaningfully in response to non-leading questions” such as witness who is “a child, infirm, has language difficulties or memory problems” or if “meaningful Tr. 305:2-6. Dr. Johnson made no attempt to use proper questioning to demonstrate that Dr. Johnson was unable to provide “meaningful” responses to non-leading questions. In addition, while Plaintiff agreed to accommodate Dr. Johnson’s request to take his trial testimony in advance of trial at his retirement home and agreed that he could have a real time transcript to accommodate his hearing loss, no representation or medical records were provided to indicate that Dr. Johnson suffered any memory impairment to require a leading examination.

Dr. Johnson’s counsel made no effort to question his client properly and instead proceeded to question his client over Plaintiff’s objection. Plaintiff seeks to strike the direct examination of Dr. Johnson in its entirety on this basis.

Alternatively, below are listed the respective designations that are objected to by the Plaintiff for the Court’s resolution.

Defendants’ Designations	Plaintiff’s Objections
298:1-21	Preserve Plaintiff’s objection to cv (DX 225) as hearsay as per Plaintiff’s MIL No. 11
329:18-24	Fed. R. Evid. 611(c) – improper leading on direct exam
330:10-12	Form “formal scientific opinion”
331:6-10	Fed. R. Evid. 611(c) – improper leading on direct exam, Form “formal scientific analysis”
339:9-16	Fed. R. Evid. 611(c) – improper leading on direct exam, Form “generally consistent”
340:19-341:2	Fed. R. Evid. 611(c) – improper leading on direct exam
347:19-24	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
348:4-10	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
348:13-18	Fed. R. Evid. 611(c) – improper leading on direct exam, Form, improper vouching for an expert

348:19-24	Fed. R. Evid. 611(c) – improper leading on direct exam, Form, improper vouching for an expert
349:1-19	Fed. R. Evid. 611(c) – improper leading on direct exam, Form, improper vouching for an expert
352:2-12	Fed. R. Evid. 611(c) – improper leading on direct exam, Form, improper vouching for an expert
354:1-15	Fed. R. Evid. 611(c) – improper leading on direct exam, Form, improper vouching for an expert
355:22-25-356:1-16	Fed. R. Evid. 611(c) – improper leading on direct exam, Form, MIL No. 1 – bar Morgan Report
357:19-24	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
360:16-24	Fed. R. Evid. 611(c) – improper leading on direct exam
361:19-25	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
362:6-10	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
362:23-25-363:1-12	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
363:21-25	Form
364:1-8	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
369:8-14	Form
371:1-7	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
372:16-23	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
374:1-6	Foundation
374:19-23	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
375:1-11	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
377:3-8	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
378:1-25	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
379:1-4	Fed. R. Evid. 611(c) – improper leading on direct exam, Form

380:23-381:6	Fed. R. Evid. 611(c) – improper leading on direct exam, Form, MIL No. 1 – Bar Morgan Report
383:20-384:3	Fed. R. Evid. 611(c) – improper leading on direct exam, Form.
388:4-9	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
389:13-18	Fed. R. Evid. 611(c) – improper leading on direct exam, Leading, and Foundation
389:19-25	Fed. R. Evid. 611(c) – improper leading on direct exam, Leading.
390:22-391:3	Fed. R. Evid. 611(c) – improper leading on direct exam, Leading, and Foundation
391:7-14	MIL No. 2, Daubert Order Dckt. 287
391:23-392:3	Form, Fed. R. Evid. 611(c) – improper leading on direct exam
393:3-394:1	Form, Foundation, Fed. R. Evid. 611(c) – improper leading on direct exam, MIL No. 2, Daubert Order Dckt 287
396:25-397:15	Fed. R. Evid. 611(c) – improper leading on direct exam, Foundation, Daubert Order Dckt 287 – bar opinion on role of cross examination and bar Morgan Report; MIL No. 1
397:23-398:1	Form, Foundation, Daubert Order Dckt 287 - bar opinion on role of cross examination and bar Morgan Report; MIL No. 1
398:3-8	Form, Fed. R. Evid. 611(c) – improper leading on direct exam
399:6-12	Form, Fed. R. Evid. 611(c) – improper leading on direct exam
399:13-18	Form, Fed. R. Evid. 611(c) – improper leading on direct exam, MIL No. 1
400:1-11	MIL No. 1, FRE 801
400:22-402:23	MIL No. 1
403:1-404:12	MIL No. 1
405:2-7	Form, Foundation, Fed. R. Evid. 611(c) – improper leading on direct exam
406:9-12	Form

406:22-25	Form
413:3-9	MIL No. 1
414:6-11	Fed. R. Evid. 611(c) – improper leading on direct exam
415:20-416:3	Form
416:18-24	Fed. R. Evid. 611(c) – improper leading on direct exam, Form
416:25-417:11	Foundation
418:19-24	Form, Fed. R. Evid. 611(c) – improper leading on direct exam
419:1-11	Fed. R. Evid. 611(c) – improper leading on direct exam
420:12-22	Form, Fed. R. Evid. 611(c) – improper leading on direct exam
424:1-425:2	Foundation, Dckt. 287 – improper testimony as to the qualifications of an expert
425:3-10	Foundation; Dckt. 287 – improper testimony on the qualifications of an expert
426:17-24	Form, Foundation
426:25-427:5	Form
428:14-19	Rule of Completeness, FRE 106
428:25-429:4	Fed. R. Evid. 611(c) – improper leading on direct exam
430:10-15	Form, Fed. R. Evid. 611(c) – improper leading on direct exam
430:17-22	Form, Fed. R. Evid. 611(c) – improper leading on direct exam
430:23-431:25	Foundation, Form, Fed. R. Evid. 611(c) – improper leading on direct exam, Dckt. 287 – baring testimony on state of mind, MIL No. 3
431:14-19	Form, Foundation, Fed. R. Evid. 611(c) – improper leading on direct exam
431:20-432:4	Form, Fed. R. Evid. 611(c) – improper leading on direct exam
432:5-14	Form, Foundation
432:17-433:1	Form, Foundation

433:2-12	Form, Foundation, MIL No. 1 – Morgan Report; Dckt. 287
433:16-25	Dckt. 287; MIL No. 2 – improper state of mind

Dated: 6/18/2019

LOEVY & LOEVY

/s/ Heather Lewis Donnell  
HEATHER LEWIS DONNELL  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I, Heather Lewis Donnell, an attorney, certify that on June 18, 2019, I filed a copy of Plaintiff's Objections To Lowell T. Johnson Exam Designations.

/s/ Heather Lewis Donnell